IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Regular First Appeal Nos.314 and 315 of 2000.

Judgment Reserved on: 5.9.2007

Date of decision: 28.09.2007.

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1. **RFA No.314 of 2000.**

Ved Parkash Sood ….**Appellant**

Versus

State of H.P. & Another ….**Respondents**

2. **RFA No.315 of 2000.**

Ajay Kumar Sood ….**Appellant**

Versus

State of H.P.& Another ….**Respondents**

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The Hon'ble Mr.Justice Dev Darshan Sud,J.

Whether approved for reporting ?[1]

For the Appellant(s): **Mr.Ajay Kumar, Advocate.**

For the Respondents: **Mr.M.S. Chandel, Advocate General with Mr.Rajan Dewan, Additional Advocate General.**

Dev Darshan Sud,J.

Both these appeals are being disposed of by a common judgment as they involve common questions of law and facts.

The appellants have challenged the compensation awarded by the learned District Judge for acquisition of their lands by the respondents.

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgement*?**

Brief facts necessary for the determination of the case are that the respondent-State issued a Notification, under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the `Act') on 7.10.1988, for acquiring land measuring 0-19-60 hectares situated in Mohal Garh, Tehsil Dehra for construction of a Rest House at Pragpur. The Notification was published in the Himachal Pradesh Rajpatra on 14.1.1989. Proceedings under Sections 6 and 7 of the Act were completed in accordance with law. The appellants in RFA No.314 of 2000 claimed that the value of the acquired land was not less than Rs.80,000/- per Kanal and that the compensation awarded was inadequate. In the case of Ms.Mohini Sood, the market value of land was claimed at the rate of Rs.3,00,000/- per Kanal. Parties led evidence in the matter and the learned District Judge, Kangra, granted enhancement by holding that the value of the land was Rs.69/- per square meter as against Rs.30.35 per square meter awarded by the Collector. An appeal was preferred by the State before this Court. This Court vide its judgment dated 15.11.1999 remanded the matter to the Reference Court for determination afresh. The learned Reference Court held that the market value is to be determined in terms of the two sale deeds on record; namely; Ex.PW-2/A dated 8.12.1987, vide which the land was sold at the rate of Rs.49,000/- per Kanal. The second sale deed Ex.R-1

shows that the value of the acquired land is Rs.1500/- per Kanal. It also holds that because of the variation in the price, the sale deed Ex.PW-2/A cannot be relied upon as the sale consideration is unreasonable and inflated. The learned Court holds that the possession of the land on which the Rest House was to be constructed was taken in the year 1984 which means that the appellants had knowledge that the land was going to be acquired and in these circumstances the sale deed Ex.PW-2/A was not genuine and has been executed for the purposes of claiming higher rate of compensation/inflating the value of the land.

I have heard learned counsel for the parties and have gone through the record of the case.

PW-1 is Ved Parkash, who has stated that the acquired land is centrally located. It is well connected with roads, the main road, being the Pragpur – Garli – Amb Road which is at a distance about 10 meters from the acquired land. The land is situated in Mohal Garh. He states that the value of the land was Rs.80,000/- per Kanal when the Notification under Section 4 of the Act was issued. It is significant to note that in his evidence he deposes that the bus stand is at a distance about 150 meters from the acquired land; banks, hospital and main shopping centre are only at a distance of about 100/150 meters from the acquired land. This evidence has remained

un-rebutted as there is no evidence on behalf of the respondents to show the type and nature of the land subject matter of the sale deed Ex.R-1 or that the acquired land does not possess these advantages. He has proved in evidence Ex.PW-1/A, Ex.PW-1/B, Ex.PW-1/C and Ex.PW-1/D, which are the aks-tatima shajra Kisatbar in respect of the acquired land. In his cross-examination, he states that the Central Bank of India is at a distance of about 30 meters from the acquired land and hospital is about 50 to 60 meters away.

PW-3 is Shri Gulshan Rai, Advocate, who states that he was marginal witness of sale deeds Ex.PW-2/A and Ex.PW-2/B. He states that he has identified both the vendors and vendees. There is nothing in his cross-examination to suggest to this witness that the sale deeds were procured solely for the purpose of raising the price of the acquired land. There is nothing in his cross-examination which has been elicited from this witness to show that the transactions, to which he was a witness, were either procured or prepared only for the purposes of reflecting a wrong value of the land which would be useful to the claimant.

PW-4, Shri Jatinder Mohan Sharma, is the Manager of Punjab National Bank. He testifies that he had purchased one Kanal land from Om Parkash son of Sita Ram for Rs.49,000/- for the purposes of constructing his

residence. He is emphatic in admitting in cross-examination the suggestion given by the State that a bank and other basic amenities are available in the near vicinity. He denies the suggestion that the market price of the land during those days in that area was between 10,000/- to 11,000/- rupees per Kanal.

PW-5, Shri Pyar Singh, proves Ex.PW-2/B by stating that he sold five Marlas of land for a sum of Rs.20,000/-. He denies suggestion that the land has been sold at an inflated value.

RW-1 is the purchaser of land vide Ex.R-1. This is the entire evidence.

The reasoning of the learned District Judge rejecting the sale deed brought on the record by the claimants cannot be accepted. Undisputed fact is that both the sale deeds have been executed within a short span of time i.e. within about one month or so. There can be no inference that the price shown in the sale deed brought on the record by the claimants is excessive as it has been manipulated for the purposes of inflating the value of the acquired land. The un-rebutted evidence on the record is that the acquired land is in the heart of the town and a stones throw away from amenities like bank, hospital, bus stand, shopping centre and main road. These factors would definitely tend to show that the land possesses potential and that is a reason as to why it was required for the purposes of constructing a Rest House.

It is also undisputed that the value of the land as shown in the two sale deeds is huge. This difference has not been explained nor has any attempt made to unravel this yawning hiatus. In the facts and circumstances, the fair and just compensation has to be determined. To start with, the value of the land shown by the difference cannot be accepted as it is. It would only be by approximation that this finding is to be arrived at.

The principles for determination of just compensation are by now well settled by the Hon'ble Supreme Court. In ***ONGC Ltd. v. Sendhabhai Vastram Patel and others (2005) 6 SCC 454***, the Hon'ble Supreme Court has reiterated the principles applicable for determining the just compensation. It was held:

> ***"12.*** *The Reference Court, it is trite, has to apply the comparable sales method as also the situation of the land which is to be appreciated upon considering the question as to whether acquired land is similar to any land sold in the vicinity.*
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> ***13.*** *In* ***Shaji Kuriakose v. Indian Oil Corpn. Ltd., (2001) 7 SCC 650,*** *this court observed:*
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> *(SCC pp.652-53, para 3).*
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> > *"3. It is no doubt true that courts adopt comparable sales method of valuation of land while fixing the market value of the acquired land. While fixing the*

market value of the acquired land, comparable sales method of valuation is preferred than other methods of valuation of land such as capitalization of net income method or expert opinion method. Comparable sales method of valuation is preferred because it furnishes the evidence for determination of the market value of the acquired land at which a willing purchaser would pay for the acquired land if it had been sold in the open market at the time of issue of notification under Section 4 of the Act. However, comparable sales method of valuation of land for fixing the market value of the acquired land is not always conclusive. There are certain factors which are required to be fulfilled and on fulfillment of those factors the compensation can be awarded, according to the value of the land reflected in the sales. The factors laid down inter alia are: (1) the sale must be a genuine transaction, (2) that the sale deed must have been executed at the time proximate to the date of issue of notification under Section 4 of the Act, (3) that the land covered by the sale must be in the vicinity of the acquired land, (4) that the land covered by the sales must be similar to the

> *acquired land, and (5) that the size of plot of the land covered by the sales be comparable to the land acquired. If all these factors are satisfied, then there is no reason why the sale value of the land covered by the sales be not given for the acquired land. However, if there is a dissimilarity in regard to locality, shape, site or nature of land between land covered by sales and land acquired, it is open to the court to proportionately reduce the compensation for acquired land than what is reflected in the sales depending upon the disadvantages attached with the acquired land.*

"(See also P.Ram Reddy v. Land Acquisition Officer, (1995)2 SCC 305 and Panna Lal Ghosh v. Land Acquisition Collector, (2004) 1 SCC 467).

16. *In* ***Viluben Jhalejar Contractor (Dead) By LRs. v. State of Gujarat, (2005) 4 SCC 789,*** *this court held:*
(SCC pp.796-97, paras 18-21)

> ***"18.*** *One of the principles for determination of the amount of compensation for acquisition of land would be the willingness of an informed buyer to offer the price therefor. It is beyond any cavil that the price of the land which a willing and informed buyer*

would offer would be different in the cases where the owner is in possession and enjoyment of the property and in the cases where he is not. 19. Market value is ordinarily the price the property may fetch in the open market if sold by a willing seller unaffected by the special needs of a particular purchase. Where definite material is not forthcoming either in the shape of sales of similar lands in the neighbourhood at or about the date of notification under Section 4 (1) or otherwise, other sale instances as well as other evidences have to be considered.

19. *Market value is ordinarily the price the property may fetch I the open market if sold by a willing seller unaffected by the special needs of a particular purchase. Where definite material is not forthcoming either in the shape of sales of similar lands in the neighbourhood at or about the date of notification under Section 4(1) or otherwise, other sale instances as well as other evidence have to be considered.*

20. *The amount of compensation cannot be ascertained with mathematical accuracy. A comparable instance has to be*

identified having regard to the proximity from time angle as well as proximity from situation angle. For determining the market value of the land under acquisition, suitable adjustment has to be made having regard to various positive and negative factors vis-a-vis the land under acquisition by placing the two in juxtaposition. The positive and negative factors are as under:

	Positive factors		***Negative factors***
(i)	*Smallness of size*	*(i)*	*Largeness of area*
(ii)	*Proximity to a road*	*(ii)*	*Situation in the interior at a distance from the road*
(iii)	*Frontage on a road*	*(iii)*	*Narrow strip of land with very small frontage compared to depth*
(iv)	*Nearness to developed area*	*(iv)*	*Lower level requiring the depressed portion to be filled up*
(v)	*Regular shape*	*(v)*	*Remoteness from developed locality*
(vi)	*Level vis-à-vis land under acquisition.*	*(vi)*	*Some special disadvantageous factors which would deter a purchaser*
(vii)	*Special value for an owner of an adjoining property to whom it may have some very special advantage.*		

21. *Whereas a smaller plot may be within the reach of many, a large*

> *block of land will have to be developed preparing a layout plan, carving out roads, leaving open spaces, plotting out smaller plots, waiting for purchasers and the hazards of an entrepreneur. Such development charges may range between 20% and 50% of the total price."*

"It was further observed : (SCC p.798, para24)

> ***"24.** The purpose for which acquisition is made is also a relevant factor for determining the market value. In **Basavva v. Spl. Land Acquisition Officer (1996) 9 SCC 640** deduction to the extent of 65% was made towards development charges."*

The compensation so arrived at is subject to deduction towards developmental charges which are to be determined with reference to the location and surrounding of the acquired land.

In ***Alad Brothers v. State of M.P. and another (2005) 1 SCC 545,*** deduction of 30% was allowed for development of the land. The normal rule is that 1/3 or 33% should be allowed as deduction charges for development of the land.

Coming to the facts of the present case, it would be difficult to hold that the sale instance brought on record by the claimants is to be rejected

outright as it gives a very high value of the land. At the same time, the instance of sale brought on record by the respondents cannot be accepted as representing the true and fair market value. Considering the factors brought on record of the case by the appellants showing that the land is acquired for purpose of construction of rest house and that the acquired land is situated in the heart of the town having all amenities, that is to say, proximity to the main road, bank, hospital and bus stand, the appellants would definitely be entitled to a higher rate of compensation. The learned District Judge was clearly in error in disposing of the reference petition by refusing the increase asked for by the claimants. The evidence on record does not justify the conclusion that the sale instance relied upon by the claimants is either a sham or has been procured for the purpose of securing a higher rate. The sale instance relied upon by the respondents relates to land measuring 12 kanals. This is definitely a large tract of land and the holdings of the claimants are smaller. In order to balance equities, I hold that the just and fair compensation of the land, by applying the principles laid down by the Hon'ble Supreme Court in the two judgments above, should be the average of the two sale instances which would work out to Rs.25,250/- per kanal. From this, **$33^{1/3}$**% is required to be deducted for development charges. The

compensation payable to the appellants would, thus, work out to Rs.16,834.17 paise per kanal or in other words Rs.16,835/- per kanal.

This appeal is accordingly allowed. The judgment of the learned reference Court, to the extent it denies the increase claimed by the appellants, is set aside. The appellants shall be entitled to compensation @ Rs.16,835/- per kanal and all the consequential statutory increases in solatium and interest as provided for under the Act. These appeals are accordingly allowed. There shall be no order as to costs.

September 28, 2007 **(Dev Darshan Sud)**
(aks) **Judge.**